



## **Summary of Senate Bill 4 (SBX2 4)**

### **Performance Based Infrastructure/Public-Private Partnerships**

#### Senate Bill 4 (SBX2 4) - General Information

- Sponsor – State Senator Dave Codgill (14<sup>th</sup> District)
- Passed – February 15, 2009
- Signed by Governor – February 20, 2009
- Effective Date – May 21, 2009

#### **Performance-Based Infrastructure**

##### Location of Statutory Changes

- Streets and Highways Code 143

##### Agencies Authorized to Carry Out Projects

- Caltrans
- “Regional transportation agencies” – Defined as:
  - Transportation planning agencies as defined in Gov. Code Sections 29532 or 29532.1;
  - County transportation commissions as defined in Public Utilities Code Sections 130050, 130050.1 or 130050.2;
  - Any other transportation entity designated by statute as a regional transportation entity; and
  - Joint exercise of powers authority as defined in Gov. Code Section 6500, with the consent of a transportation planning agency or a county transportation commission.
- Caltrans and regional transportation agencies may procure these projects together or separately

##### Number of Projects Authorized

- Unlimited number of projects, but candidate projects (proposed by Caltrans and RTAs) must be selected by the CTC
- CTC will review proposed projects for consistency with the following objectives/requirements
  - Improve mobility
  - Improve the operation or safety of the corridor
  - Provide quantifiable air quality benefits
  - Address a known forecast demand (as determined by Caltrans/RTAs)
- Agreements may be entered into under this statute until December 31, 2016

### Types of Projects Eligible

- PBI projects authorized by the statute include:
  - Highway projects
  - Public street projects
  - Rail projects
  - Related facilities supplemental to existing facilities currently owned and operated by Caltrans/RTAs
- The work on these projects may include one or more of the following:

○ Planning	○ Rehabilitation
○ Design	○ Improvement
○ Development	○ Acquisition
○ Finance	○ Lease
○ Construction	○ Operation
○ Reconstruction	○ Maintenance

### Creation of Public Infrastructure Advisory Commission (PIAC)

- Auxiliary organization established by the Business, Transportation and Housing Agency
- Clearinghouse of PBI-related services and information
- PIAC is authorized to:
  - Identify candidate PBI projects throughout California
  - Research PBI best practices/lessons learned
  - Assemble information related to P3s that Caltrans/RTAs can utilize
- At the request of Caltrans/RTAs, and for the payment of a fee, PIAC may:
  - Advise Caltrans/RTAs regarding best practices or the suitability of a particular projects
  - Provide procurement-related services to Caltrans/RTAs (presumably including drafting lease agreements)
- Comment on agreements prior to execution

### Project Development Services for State Highway System Projects

For all PBI projects on the state highway system, Caltrans' employees and consultants are responsible for performing "project development services," such as drafting technical requirements documents and performance specifications, carrying out preliminary engineering and performing construction inspection services. This does not apply to RTA projects.

### Procurement Methods/Process

- **Procurement Approaches** – Caltrans/RTAs may, but are not limited to utilizing, one or more of the following procurement approaches:
  - Solicitations for defined projects and calls for proposals within defined parameters;
  - Prequalification and short-listing prior to final evaluation of proposals;
  - Final evaluation of proposals based on qualifications and best value (CTC shall develop and adopt the evaluation criteria);
  - Negotiations with proposers prior to award; and
  - Acceptance of unsolicited proposals, provided that Caltrans/RTA's issue a request for competing proposals and award to the unsolicited bidder is not permitted unless there is at least one other responsible bid.

- **Low Bid or Best Value Selection** – Caltrans/RTAs may award a contract on the basis of either low bid or best value. Unlike design-build projects, this is left to Caltrans/RTAs' discretion.
- **Public Hearing** – Caltrans/RTAs must hold at least one public hearing at a location near the proposed facility for purposes of receiving public comment on the lease agreement
- **Legislature/PIAC Review of Lease / Public Comments**– At least 60 days prior to executing the lease agreement, Caltrans/RTAs shall submit the draft lease and any comments from the public hearing(s) to the legislature and PIAC for review. The legislature or Secretary of Business, Transportation and Housing may provide written comments to Caltrans/RTAs within this 60-day period. Caltrans/RTAs shall consider those comments prior to executing the lease. No approval is required from the legislature or PIAC to execute the lease.

#### Permitted (Not Required) Lease Provisions

- Lease of rights-of-way, issuance of permits or other authorizations needed to build the project
- Non-compete provisions that provide for reasonable compensation due to adverse effects on toll revenue/user fee revenue due to the development, operation or lease of other projects, except the following types of projects:
  - Projects identified in regional transportation plans;
  - Safety projects;
  - Improvement projects that result in incidental capacity improvements;
  - Additional HOV lanes or the conversion of existing lanes to HOV lanes; and
  - Projects located outside the project boundaries (limits set in the lease agreement).

This provision shall not infringe on the authority of Caltrans/RTAs to develop any transportation project. The compensation described above shall only be made after a demonstrable reduction in use of the facility resulting in reduced revenues and may not exceed the difference between the reduction in those revenues and the amount necessary to cover the costs of debt service, including principal and interest on any debt incurred for the development, operation, maintenance or rehabilitation of the facility.

#### Required Lease Provisions

- **Ownership** - Facility must be owned by Caltrans/RTA
- **Tolling** - Authorization for the contracting entity/lessee to impose tolls and user fees and to require that those tolls be applied to:
  - Payment of capital outlay costs
  - Costs associated with operations, toll and user fee collection and administration of the facility
  - Reimbursement to Caltrans or other governmental entities for costs of services to develop and maintain the project
  - Police services
  - A reasonable return on investment for the contracting entity/lessee

- Excess User Fees – The lease shall require that excess tolls / user fees be applied to any indebtedness incurred by the contracting entity/lessee for the project, project improvements or be paid to the State Highway Account, except that excess revenues from an RTA project may be paid to the RTA for use in improving public transportation in/near the project
- Specific Toll or User Fee Rates – The lease shall establish toll/user fee rates. Any proposed increase in those rates not otherwise described in the lease agreement must be approved by Caltrans/RTA after at least one public hearing.
- Reversion/Handback - Complete reversion/handback of the leased facility to Caltrans/RTA, along with the right to collect tolls, at the expiration of the lease. Facility shall be delivered in a condition that meets the performance and maintenance standards set by Caltrans/RTA and be free of any lien or other claims.
- Design/Build - Authorization for the contracting entity/lessee to use a design-build method of procurement for transportation projects, subject to the requirements for utilizing such a method in Chapter 6.5 of the Public Contract Code (commencing with Section 6800), other than Sections 6802, 6803 and 6813, if those provisions are enacted by the legislature during the 2009-10 Regular Session or a 2009-10 extraordinary session
- Indemnity - Indemnity provisions, including a provision that indemnifies the State of California or RTA against any claims or losses resulting or accruing from the performance of the contracting entity or lessee
- Plans/Specifications – The plans/specifications developed for the project shall comply with Caltrans' standards for state transportation projects
- Performance Standards – The lease shall include performance standards, including, but not limited to, level of service requirements
- State highway System Projects – Agreement shall require such projects to meet noise mitigation, landscaping, pollution control and safety requirements that otherwise apply to Caltrans projects
- Project Information – Contracting entity/lessee shall provide any information requested by CTC or legislative analyst

#### Required Lessee/Contracting Entity Qualifications

- Evidence that the members of the lessee/contracting entity have the experience and capacity to complete the project
- Evidence that the proposed key personnel have sufficient experience and training to competently manage and complete the project
- Financial statement that ensures that the lessee/contracting entity has the financial capacity to complete the project
- Licenses, registration and credentials required to design and construct the project
- Evidence of the capacity of the members of the lessee/contracting entity to obtain all required payment and performance bonds, liability insurance and errors and omissions insurance (statute is silent regarding payment and performance bond requirements)
- Evidence of workers' compensation experience, history and an acceptable worker safety program
- Full disclosure of OSHA violations, contract defaults, bankruptcies, etc.

#### Extension of Tolling

- The CTC or RTA may choose to continue to collect tolls or user fees from a toll facility after the expiration of the lease agreement
- All such tolls or user fees shall be applied to the improvement, continued operation or maintenance of the facility

#### Project Cost Responsibility

- Caltrans, RTAs and other state/local agencies may provide project development services to the contracting entity/lessee for which the public entity is reimbursed
- Except as may be set out in the lease agreement, the lessee/contracting shall be responsible for all costs to develop, operate, maintain, etc. the project

#### Project Inspection

Caltrans or RTAs, as applicable, shall regularly inspect the facility and require the contracting entity/lessee to maintain and operate the facility according to adopted standards

#### Contracting Entity/Lessee Members Responsibility for Performance

If contracting entity/lessee is a partnership, joint venture or an association that is not a legal entity, the general partners, joint venturers or association members shall be fully liable for performance under the lease agreement

#### Creation of HOV Lanes

The act does not infringe on the authority to develop HOT lanes under S&H Code Sections 194.4-6

#### Conversion of Non-Tolled Lanes

Conversion of any existing non-tolled or non-user fee lanes into tolled/user fee lanes is prohibited, with the exception of HOV to HOT lane conversions

#### Real Property / Ad Valorem Taxation

PBI projects are deemed to be public property for a public purpose and exempt from leasehold, real property and ad valorem taxation, except for the use, if any, of that property for ancillary commercial purposes

#### Reporting Requirements

The CTC, in cooperation with the legislative analyst, shall annually prepare a report on the status of each project and any concerns or recommendations for changes in the program

#### Doyle Drive Project

Lease agreements may not affect, alter or supersede the November 26, 2008 MOU between the Golden Gate Bridge Highway and Transportation District, the Metropolitan Transportation Commission and the San Francisco County Transportation Authority relating to the financing of the US 101/Doyle Drive reconstruction project located in the city and county of San Francisco